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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,997	06/29/2001	Martin Bondo Jorgensen	0459-0625P	5697
30593	7590	03/07/2006	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			LE, HUYEN D	
P.O. BOX 8910			ART UNIT	
RESTON, VA 20195			PAPER NUMBER	
			2646	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/893,997

Applicant(s)

JORGENSEN ET AL.

Examiner

HUYEN D. LE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 14-16, 18-28, 30-33 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 17, 29 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 14-16, 18-28, 30-33 and 35 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/17/01; 02/04/03</u> . | 6) <input checked="" type="checkbox"/> Other: <u>IDS filed 12/27/05</u> .               |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the controlling device comprising a switch (claim 10) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6, 8-10, 12, 17 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Killion (U.S. patent 5,524,056).

Regarding claims 1-4, 6, 17 and 34, Killion teaches a microphone assembly (figures 1 and 16-20) for mounting in an electronic communication device (figures 18, 19). As shown in figures 18-20, the microphone assembly comprises one or more sound inlet ports (440, 400, 400', 415, 415'), one or more microphones (15, 20, 65, 70, 445, 450) and one or more controlling devices (55, 395, 395', 410, 435, 475, 480, 485) for controlling the operation of the microphone assembly. As shown in the drawings, the inlet ports, the microphones and the controlling devices are combined to form an integrated part of the microphone assembly (figures 18-20, the Applicant should also note the attached definition of the term "integrated" from the Webster's II New Riverside University Dictionary).

Regarding claim 8, as broadly claimed, Killion shows the controlling devices that are positioned to facilitate operation by applying a force to the integrated microphone assembly as claimed (figures 18, 19 and 20).

Regarding claims 9-10 and 12, as broadly claimed, it is inherent that the operations of the Killion hearing aid device comprises powering down (on/off) or activating (55, 435) the device.

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4. Claims 1-4, 6, 8-10, 12, 17 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruegg (U.S. patent 3,875,349).

Regarding claims 1-4, 6, 8-10, 12, 17 and 34, Ruegg teaches a microphone assembly (figures 1 and 5) for mounting in an electronic communication device (hearing aid device). As shown in figure 5, the microphone assembly comprises one or more sound inlet ports (31, 32, 33, 34, 35, 36, 37), one or more microphones (11, 12) and one or more controlling devices (22, 33, 36, 37) for controlling the operation of the assembly. As shown in the drawings, the inlet ports, the microphones and the controlling devices are combined to form an integrated part of the microphone assembly (figures 1-2 and 5, the Applicant should also note the attached definition of the term “integrated” from the Webster’s II New Riverside University Dictionary).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 11-12, as interpreted in a different manner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Killion (U.S. patent 5,524,056) or Ruegg (U.S. patent 3,875,349).

Regarding claims 11-12, as interpreted in a different manner, Killion or Ruegg does not specifically show a push button, a tragus responsive switch, a turning knob, on/off switch or a volume control as claimed. However, the examiner takes the Office Notice that providing an on/off button or a knob for the switch, and/or a volume control in a hearing aid device is very well known in the art.

Therefore, it would have been obvious to one skilled in the art to provide any type of switch such as a button or a knob and/or a volume control in the hearing aid of Killion or Ruegg for better adjusting and operating the device.

### ***Response to Arguments***

7. Applicant's arguments filed 12/27/05 have been fully considered but they are not persuasive.

Responding to the arguments about the limitations of the sound inlet ports, microphones and controlling devices being combined to form an integrated microphone assembly in the Killion and Ruegg references, the Applicant should note the definition of the term "integrated". According to page 634 of Webster's II New Riverside University Dictionary (1984), the term "integrated" means "to make into a whole by bringing all parts together" or "to join with something else". As shown by figures 18-20 in Killion and figures 1-2 and 5 in Ruegg, the

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sound inlet ports, the microphones and the controlling devices are combined to form an integrated microphone assembly.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL  
March 3, 2006



HUYEN LE  
PRIMARY EXAMINER